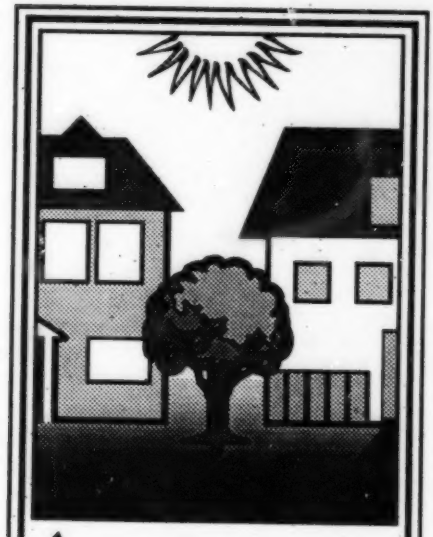

Apartments In Houses

A Consultation Paper on

Legislative Amendments to Allow

One Apartment in a House

Ontario
Ministry of Municipal Affairs
Ministry of Housing

This document contains draft legislation and regulations which have been prepared for consultation purposes only. They, and any explanatory materials in this package, do not contain any legal opinion or interpretation of any statute, and do not necessarily reflect the final intent of the Government of Ontario with respect to amendments of those Acts or to the regulations.

92-07881/

Apartments In Houses

This consultation package outlines proposed legislation which is intended to: increase the supply of apartments in houses; improve the powers of entry available to municipal officials; clarify that unrelated people may share a home as a household; and encourage the installation of garden suites, (sometimes known as "granny flats").

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Ontario Ministry of Municipal Affairs Ministry of Housing

Ontario

Ministry of Housing

Ministry of Municipal Affairs

777 Bay Street
Toronto, Ontario
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June 1992

A MESSAGE FROM THE MINISTERS OF MUNICIPAL AFFAIRS AND HOUSING

Our government wants to increase the amount of affordable housing in Ontario communities. We also want people to have choice in the type and location of the housing they live in and the kind of living arrangements that suit them.

Right now there are many barriers to having the kind of affordable housing people want and need. We are tackling these barriers in many ways. One way is to change the law.

We plan to change the laws in Ontario to let homeowners have an apartment in their house, to facilitate the creation of garden suites and to make it clear that unrelated people may share living accommodation if they form a household. The new laws will also help municipalities ensure that health and safety standards can be enforced by giving municipal officials better powers of entry.

To make sure the changes in the law will work well, we are providing you with a draft of the proposed amendments to the Planning Act and the Municipal Act. We welcome suggestions for improvements.

As well, possible regulations for municipal zoning and property standards for apartments in houses are outlined. We want your views on the approaches proposed for the regulations.

Thank you for taking time to read this paper. We look forward to receiving suggestions that will improve our proposed legislation and regulations.

Dave Cooke
Minister of Municipal Affairs

Evelyn Gigantes
Minister of Housing

CONSULTATION PROCESS

If you wish to obtain additional copies of this paper in either English or French, please contact:

Communications Branch
Ministries of Housing and Municipal Affairs
17th Floor, 777 Bay Street
Toronto, Ontario
M5G 2E5
Tel: (416) 585-7041

When you have reviewed the proposed legislation and regulations, please forward your submission to:

Apartments in Houses Consultation
Ministries of Housing and Municipal Affairs
777 Bay Street
Toronto, Ontario
M5G 2E5

The deadline for submissions is August 31, 1992.

TABLE OF CONTENTS

		Page
I.	**WHY ACTION IS BEING TAKEN**	1
	What we mean by "an apartment in a house"	1
	Why apartments in houses are needed	1
	Other issues that need to be dealt with	2
II.	**EXPLAINING THE LEGISLATION**	5
	Overview	5
	Permitting apartments in houses "as of right"	6
	Improving municipal powers of entry	7
	Helping unrelated people who form single housekeeping units	7
	Helping municipalities accommodate garden suites	8
	Draft legislation	9
III.	**EXPLAINING THE REGULATIONS**	17
	Overview	17
	Definitions	17
	Zoning standards for consultation	20
	Property standards for consultation	27
IV.	**QUESTIONS & ANSWERS ON RELATED ISSUES**	33

Why Action Is Being Taken

What we mean by "an apartment in a house"

When we talk about "an apartment in a house" we mean second homes created in existing or new houses. The installation of such apartments results in residential structures containing two units, instead of just one. The apartment can be in the basement of a house, or anywhere else on the premises. This type of apartment can also be created when a larger house is divided into two (for example, with one unit on the ground floor and one on the second floor), or through adding to a house.

Apartments in houses are sometimes called "accessory apartments", "second units", or "basement apartments".

Why apartments in houses are needed

Apartments in houses are supported by the government because they:

- are a source of affordable housing for people who need it, and at no or little cost to the taxpayers;
- can ease the financial burden of home ownership by providing an additional source of income;
- mean jobs for people in the renovation and building supply business;

- are environmentally friendly because they use existing housing better and support public services and systems, such as transit, instead of contributing to urban sprawl;

- support neighbourhood diversity and smaller scale development in keeping with the scale and character of existing communities.

Because apartments in houses are desirable, policies encouraging municipalities to permit them have been in place for some time. With the 1989 Land Use Planning for Housing Policy Statement, the Ontario government indicated that municipalities are to allow apartments in houses (referred to in the statement as "accessory apartments") to be located in residential areas.

The Housing Policy Statement also asked municipalities to eliminate excessive zoning standards that prevent apartments from being created in people's houses.

Unfortunately, so far, few municipalities have implemented the provisions for apartments in houses that are in the Housing Policy Statement. Since apartments in houses have many advantages, the time has come to take further action in this area.

Other issues that need to be dealt with

Powers of entry

Often when the issue of apartments in houses is raised, there is a concern about standards. No one, especially the Ontario government, wants inadequate or unsafe conditions in housing.

Municipalities have long identified better powers of entry as an important tool in enforcing health and safety standards for apartments in houses. If action is taken to amend the Planning Act to allow more apartments in houses, this would be a good opportunity to deal with this area as well.

Single housekeeping units

The Planning Act currently prohibits municipalities from distinguishing between related and unrelated persons in municipal zoning by-laws.

However, municipalities have attempted to regulate groups of unrelated persons by classifying their homes as "rooming houses", even in cases where those individuals live together as one household.

Amending the Planning Act to require that groups of unrelated people who form a "single housekeeping unit" be treated like any other household for zoning purposes would help overcome this problem.

Garden suites

Another concern of municipalities and people in the community has been the laws that govern "garden suites". Garden suites are separate, self-contained units that are typically located in the side or rear yards of an existing house. They usually house an elderly or disabled person who wants an independent living area but also needs the support of family or friends living in the main house.

Pioneered in Australia, where they are called "granny flats", garden suites are a way to accommodate people with special needs. The Province sponsored a five-year demonstration project under which a total of twelve garden suites were installed in three Ontario municipalities. An evaluation of the project found that such units were technically feasible, and that there was a high level of satisfaction among participating families. Many others have expressed interest in the garden suite option, and have asked the Ontario government to change the laws to help municipalities that want to permit garden suites.

Many municipalities have indicated that they are willing to help people who want to have garden suites in their yards. Most interested municipalities prefer that the necessary approvals be given on a case by case basis. As well, municipalities have requested that they be given the authority to enter into agreements with people who want garden suites and those who will live in them. There have also been requests for an extension to the three-year limit applicable to the temporary use by-laws for garden suites because this limit leads to uncertainty for people installing units and discourages the provision of this type of housing.

Explaining The Legislation

Overview

The draft legislation set out in this consultation paper would amend two existing laws: the Planning Act and the Municipal Act. The amendments would:

- allow people to have one apartment in their house without getting special permission from the municipality; an apartment in a house would be a "permitted use" which would be allowed on an "as-of-right" basis;
- allow for regulations which describe zoning or property standards that can apply to apartments in houses;
- improve the ability of municipal officials to obtain a search warrant to investigate problems with zoning or property standards;
- strengthen the rules which limit the authority of municipalities to make distinctions based on the relationship among people who share a home; and
- help municipalities accommodate the creation of garden suites.

The actual draft legislation is presented in this paper for review, and starts on page 8. What follows is a brief explanation of the key elements of the proposed legislation.

Permitting apartments in houses "as of right"

Municipalities currently have the power to regulate the use of land through zoning and property standards by-laws. In other words, municipalities can say that a particular area can be used for residential use, industrial use, commercial use or some combination of land uses. As well, municipalities have the power to regulate the physical form of development (e.g. density, setbacks, and parking requirements), and to establish property standards which deal with maintenance and health and safety issues.

The draft legislation would amend the Planning Act to permit detached, semi-detached and row houses (townhouses) with two residential units which are located in residential areas. An amendment to Section 1 would define a residential unit as self-contained accommodation with its own kitchen and bathroom. The legislation would cover houses which currently have two units, as well as new two-unit houses created through new construction and renovation. Amendments to Section 16 would deal with official plan policies. Amendments to Section 31 would deal with property standards by-laws. Amendments to Section 35 would deal with zoning, site-plan control and interim control by-laws, together with zoning orders.

It is not the intent of the legislation to offer an "amnesty" to existing apartments which do not meet reasonable health and safety standards. Neither is it our intent to take away the power of municipalities to regulate the physical character of neighbourhoods, or to set reasonable health and safety standards. However, it is our intent to remove municipalities' ability to impose excessive standards which have the effect of preventing apartments from being created in houses.

The legislation would provide for regulations to be issued under section 70 of the Planning Act. The regulations would set reasonable limits for certain standards which might be applied by municipalities to houses with second units, and would prohibit the setting of other standards.

These standards would not replace the Ontario Building Code, which would continue to apply to construction activity required to install or renovate apartments in houses. In addition, the standards would not take precedence over the Ontario Fire Code and orders issued by the Ontario Fire Marshal with respect to houses which currently have second units.

The kinds of regulations we are looking at are outlined in this paper, starting on page 18.

Improving municipal powers of entry

In some cases, occupants or owners of apartments may deny entry to municipal officials who are investigating possible violations of zoning and property standards. In these situations, the Planning Act requires that municipalities obtain search warrants issued under the Provincial Offences Act. To obtain such warrants, municipalities must specify the evidence to be seized.

Municipalities have indicated that in the case of zoning and property standards violations, it is often difficult to specify physical evidence which can be seized. The evidence may be a condition (e.g. lack of adequate fire separation) that cannot be seized. To solve this, the draft legislation would amend sections 31 and 49 of the Planning Act to allow municipalities to obtain search warrants without the condition requiring that there must be evidence to be seized.

This does not mean that municipalities would have the power to enter people's homes at any time for any reason. The amendments stipulate that inspections would have to take place between 6:00 a.m. and 9:00 p.m. Before a search warrant could be obtained, it would still be necessary for municipalities to show a justice of the peace that there were reasonable grounds to believe that an offence was being committed. These protections are like the ones that exist in most laws in Ontario to protect people's right to privacy.

Helping unrelated people who form single housekeeping units

The draft legislation would also amend the Planning Act to make it clearer that zoning distinctions based on the relationships between people who form a single housekeeping unit are not permitted. The changes to the Planning Act would involve repealing the current section 35, and the inclusion of provisions addressing the related/unrelated issue in sections 31 and 34, and in the new section 35.

Helping municipalities accommodate garden suites

Section 39 of the Planning Act would be amended to allow municipalities to pass a by-law to permit the placement of a garden suite for up to 10 years. Such a by-law, like any other temporary use by-law, would be applied to a specific area or site.

The legislation would also permit a by-law intended to allow the installation of a garden suite to be made conditional on an agreement between the municipality and other parties (such as the owner or occupant of the suite). This provision would not apply to other types of temporary use by-laws.

Section 210 of the Municipal Act would also be amended to allow municipalities to enter into garden suite agreements, whether or not such structures are to be permitted on a temporary basis. These agreements could require people who want garden suites to meet reasonable terms and conditions relating to issues such as installation, maintenance or removal, and the period of occupancy.

CONSULTATION DRAFT

An Act to amend the Planning Act and the Municipal Act with respect to Residential Units and Garden Suites

1. Section 1 of the Planning Act is amended by adding the following definition:

"residential unit" means a unit that,

(a) consists of a self-contained set of rooms located in a building or structure;

(b) is used or intended for use as a residential premises; and

(c) contains kitchen and bathroom facilities that are not intended for the use of any other unit. ("unité d'habitation")

2. Section 16 of the Act is amended by adding the following subsections:

Restrictions for residential units

(2) No official plan may contain any provision that,

(a) has the effect of prohibiting the erecting, locating or use of two residential units in a prescribed class of detached house, semi-detached house or rowhouse situated in an area where residential use is permitted by by-law and is not ancillary to other uses permitted by by-law; or

(b) sets out requirements, standards or prohibitions that conflict with the requirements, standards or prohibitions prescribed by the regulations with respect to a house described in clause (a), residential units contained in it or the land on which it is situated.

Provision of no effect

(3) A provision in an official plan is of no effect if it contravenes the restriction described in clause (2)(a).

Regulations prevail

(4) A provision in an official plan that contravenes the restriction described in clause (2)(b) has effect only as if it set out the requirements, standards or prohibitions prescribed by the regulations for the purposes of that clause.

3.-(1) Section 31 of the Act is amended by adding the following subsections:

Restrictions on by-laws for residential units

(3.1) The authority to pass a by-law under subsection (3) does not include the authority to pass a by-law that,

(a) sets out requirements, standards or prohibitions that have the effect of prohibiting the occupancy or use of two residential units in a prescribed class of detached house, semi-detached house or rowhouse situated in an area where residential use is permitted by by-law and is not ancillary to other uses permitted by by-law; or

(b) sets out requirements, standards or prohibitions that conflict with the requirements, standards or prohibitions prescribed by the regulations with respect to a house described in clause (a), residential units contained in it or the land on which it is situated.

No authority to distinguish on the basis of relationship

(3.2) The authority to pass a by-law under subsection (3) does not include the authority to pass a by-law that sets out requirements, standards or prohibitions that have the effect of distinguishing between persons who are related and persons who are unrelated in respect of the occupancy or use of a property, including the occupancy or use as a single housekeeping unit.

Provision of no effect

(3.3) A provision in a by-law passed under subsection (3) or an order made under subsection 47(1) is of no effect if it contravenes the restrictions described in clause (3.1)(a) or subsection (3.2).

Regulations prevail

(3.4) A provision in a by-law passed under subsection (3) or an order made under subsection 47(1) that contravenes the restriction described in clause (3.1)(b) has effect only as if it set out the requirements, standards or prohibitions prescribed by the regulations for the purposes of that clause.

(2) Subsection 31(4) of the Act is amended by striking out "at all reasonable times" in the fourth line and substituting "between the hours of 6 a.m. and 9 p.m".

(3) Subsection 31(5) of the Act is amended by striking out "section 158 of the Provincial Offences Act" in the second and third lines and substituting "section 49.1".

4. Section 35 of the Act is repealed and the following substituted:

Restrictions on by-laws for residential units

35.-(1) The authority to pass a by-law under section 34, subsection 38(1) or section 41 does not include the authority to pass a by-law that,

(a) has the effect of prohibiting the erecting, locating or use of two residential units in a prescribed class of detached house, semi-detached house or rowhouse situated in an area where residential use is permitted by by-law and is not ancillary to other uses permitted by by-law; or

(b) sets out requirements, standards or prohibitions that conflict with the requirements, standards or prohibitions prescribed by the regulations with respect to a house described in clause (a), residential units contained in it or the land on which it is situated.

No authority to distinguish on the basis of relationship

(2) The authority to pass a by-law under section 34, subsection 38(1) or section 41 does not include the authority to pass a by-law that has the effect of distinguishing between persons who are related and persons who are unrelated in respect of the occupancy or use of a building or structure or a part of a building or structure, including the occupancy or use as a single housekeeping unit.

Provision of no effect

(3) A provision in a by-law passed under section 34, subsection 38(1) or section 41 or in an order made under subsection 47(1) is of no effect if it contravenes the restrictions described in clause (1)(a) or subsection (2).

Regulations prevail

(4) A provision in a by-law passed under section 34, subsection 38(1) or section 41 or in an order made under subsection 47(1) that contravenes the restriction described in clause (1)(b) has effect only as if it set out the requirements, standards or prohibitions prescribed by the regulations for the purposes of that clause.

5.-(1) Section 39 of the Act is amended by adding the following subsections:

Definition

(0.1) In this section, "garden suite" means a detached residential structure containing bathroom and kitchen facilities that is ancillary to an existing residential structure and that is designed to be portable.

. . . . .

Agreement for garden suite

(1.1) As a condition to passing a by-law authorizing the temporary use of a garden suite under subsection (1), the council may require the owner of the suite or any other persons to enter into an agreement with the municipality under paragraph 69.1 of section 210 of the Municipal Act.

(2) Subsection 39(2) of the Act is amended by striking out "three years from the day of the passing of the by-law" in the fifth and sixth lines and substituting the following:

(a) ten years from the day of the passing of the by-law, in the case of a by-law authorizing the temporary use of a garden suite; or

(b) three years from the day of the passing of the by-law, in all other cases.

6.-(1) Subsection 49(2) of the Act is amended by striking out "at all reasonable times" in the seventh line and substituting "between the hours of 6 a.m. and 9 p.m".

(2) Subsection 49(3) of the Act is amended by striking out "section 158 of the Provincial Offences Act" and substituting "section 49.1".

7. The Act is amended by adding the following section:

Search warrant

***49.1**-(1) A provincial judge or justice of the peace may at any time issue a warrant in the prescribed form authorizing a person named in the warrant to enter and search a building, receptacle or place if the provincial judge or justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that,*

(a) an offence under section 31 or 67 has been committed; and

(b) the entry and search will afford evidence relevant to the commission of the offence.

Seizure

(2) In a search warrant, the provincial judge or justice of the peace may authorize the person named in the warrant to seize anything that, based on reasonable grounds, will afford evidence relevant to the commission of the offence.

Receipt and removal

(3) Anyone who seizes something under a search warrant shall,

(a) give a receipt for the thing seized to the person from whom it was seized; and

(b) bring the thing seized before the provincial judge or justice of the peace issuing the warrant or another provincial judge or justice to be dealt with according to law.

Expiry

(4) A search warrant shall name the date upon which it expires, which shall be not later than fifteen days after the warrant is issued.

Time of execution

(5) A search warrant shall be executed between 6 a.m. and 9 p.m. unless it provides otherwise.

Other matters

(6) Sections 159 and 160 of the Provincial Offences Act apply with necessary modifications in respect of any thing seized under this section.

8. Section 70 of the Act is amended by adding the following clauses:

(i) prescribing classes of detached houses, semi-detached houses or rowhouses to which clause 16(2)(a), 31(3.1)(a) or 35(1)(a) applies;

(j) prescribing requirements, standards or prohibitions for the purposes of clause 16(2)(b), 31(3.1)(b) or 35(1)(b).

9. Section 210 of the Municipal Act is amended by adding the following paragraph:

Agreements re garden suites

69.1 For entering into agreements with any persons in respect of a garden suite whose use is authorized by a by-law passed under the Planning Act,

(a) in this paragraph, "garden suite" means a detached residential structure containing bathroom and kitchen facilities that is ancillary to an existing residential structure and that is designed to be portable,

(b) an agreement made under this paragraph may deal with such matters related to the temporary use of a garden suite as the council considers necessary or advisable, including,

(i) the installation, maintenance and removal of the suite,

(ii) the period of occupancy of the suite by any of the persons named in the agreement, and

(iii) the monetary or other form of security that the council may require for actual or potential costs to the municipality related to the suite.

Commencement

10. This Act comes into force on the day it receives Royal Assent.

Short title

11. The short title of this Act is the <u>Planning Statute Law Amendment Act (Residential Units), 1992</u>.

Explaining The Regulations

Overview

The proposed legislation provides for regulations which define the types of houses in which apartments are to be permitted and sets out maximum zoning and property standards which could be applied to houses with two units. In this section, the proposed regulations are described in detail.

The zoning and property standards which would be made subject to provincial regulations are based on the following policy principles:

- municipalities should continue to be able to apply reasonable standards relating to health and safety, and the regulation of land use impacts;

- houses with two units should in general be covered by the same types of standards as those containing one unit;

- the creation of new houses with two units through new construction or renovation should be encouraged;

- apartments in houses in existence as of the effective date of the legislation should be allowed to continue, provided that they can meet reasonable health and safety standards.

Definitions

The chart on the following pages contains definitions of important terms used in the legislation and regulations.

PROPOSED PROVINCIAL REGULATIONS: DEFINITIONS

TERM	DEFINITION	EXPLANATION
RESIDENTIAL STRUCTURE	A residential structure has the following characteristics: - currently used for, or intended for use for, primarily residential purposes; and - contains one or two dwelling units. There are three types of residential structures: detached houses; semi-detached houses; and row houses.	*Residential structures are the types of structures in which two units are to be permitted as-of-right.* *Structures built for non-residential purposes, but which have been converted for primarily residential use (i.e. the only non-residential uses are home occupations) qualify as residential structures.* *Structures intended for residential use at one time, but which have been converted to non-residential use (e.g. a restaurant) would be still be considered residential structures if their use reverts to primarily residential.*
DETACHED HOUSE	A detached house is a residential structure which is not attached to or ancillary to any other structure.	*Detached houses, often called single family homes, are one of the structure types in which two units are to be allowed as-of-right, provided that all other applicable standards can be met.*
SEMI-DETACHED HOUSE	A semi-detached house is a residential structure which: - was built as, and continues to represent, one of a pair of structures separated vertically by a common wall (which may be located above and/or below grade) which does not provide for internal access from one structure to the other; and - is not ancillary to any other structure.	*Semi-detached houses are a structure type in which two units are to be allowed as-of-right, provided that all applicable standards can be met.* *A residential structure created through vertically subdividing an existing structure would not be considered a semi-detached house.* *Common walls would need to meet Ontario Fire Code standards.* *"Link homes" are considered semi-detached houses where a pair of structures share a common wall below grade.*

DEFINITIONS (CONTINUED)

TERM	DEFINITION	EXPLANATION
ROW HOUSE	A row house is a residential structure which: - was built as, and continues to represent, one of a group of three or more structures; - is separated vertically from one or two of the other structures by common walls (which may be located above and/or below grade) which do not provide for internal access from one structure to another; and - is not ancillary to any other structure.	*Row houses, also called townhouses, are a structure type in which two units are to be allowed as of right, provided that all applicable standards can be met.* *Both street townhouses and townhouses forming part of a housing complex (condominium or rental) with its own internal streets would be considered row houses.* *Common walls would need to meet Ontario Fire Code standards.* *"Link homes" are considered row houses where three or more structures share common walls below grade.*
UNIT	A residential unit, as defined in the legislation.	
EXISTING UNIT	A residential unit completed and occupied on or before the date the legislation comes into force.	*In certain cases, different standards may be applied to existing units (e.g. ceiling height), so as to encourage the continued occupation of units which meet basic health and safety requirements.*
TOTAL FLOOR AREA	The total floor area of a unit, measured from the inside walls of the unit, with the exception of unfinished basement areas and furnace rooms. The total floor area therefore includes: kitchens; bathrooms; hallways and stairways internal to the unit; and storage rooms within the unit. The area occupied by internal walls also is included. The total floor area does not include: balconies; storage rooms external to the unit; hallways and laundry rooms to which the occupants of more than one unit have access; and the area taken up by the walls surrounding a unit.	*The term "total floor area" is used in a number of different standards, including minimum unit size.*

Zoning standards for consultation

Municipalities currently have zoning by-laws to regulate the types of land uses which are permitted in a neighbourhood. Zoning by-laws also regulate the physical characteristics of those uses. For example they may cover lot size, density, availability of parking, and so on.

The proposed legislation would make apartments in houses a permitted use in all residential areas. It also allows the Province to establish regulations setting maximum municipal zoning standards in certain areas, and prohibiting other standards altogether. This is to ensure that municipalities do not create excessive zoning standards which are so onerous as to make apartments in houses impractical.

The chart below outlines a number of areas where the provincial regulations would set limits on how municipalities may use zoning by-laws to regulate houses with two units.

In effect, the provincial regulations would replace standards in local by-laws which conflict with the provincial standard. A municipality could choose to have the standard in the provincial regulations, a reduced standard, or not to address a particular issue in its zoning by-law.

In a few cases, the provincial regulations would prohibit altogether the application of certain types of standards (e.g. municipalities could not require that a residential structure be of a specified minimum size for a second unit to be added).

The provincial standards would also apply to other zoning tools (e.g. municipal interim control by-laws and provincial zoning orders).

PROPOSED PROVINCIAL REGULATIONS:
ZONING STANDARDS

AREA OF REGULATION	PROPOSED PROVINCIAL STANDARD	EXPLANATION
GENERAL RULE FOR ZONING STANDARDS THAT APPLY TO RESIDENTIAL STRUCTURES WITH ONE AND TWO UNITS	Except as specified elsewhere in the regulations, zoning standards for residential structures with two units shall not exceed those applied to structures containing one unit.	*Municipalities could not impose higher standards for residential structures with two units concerning: lot size; frontage; front, side, and rear yard setbacks; height; lot coverage; density; open space area; parking stall dimensions; driveway width; etc.* *The reason is that the physical impact of a residential structure with two units is similar to one with a single unit. Different standards may be set where a land use impact is identified (e.g. number of parking spaces) or where there are health and safety issues.*

AREA OF REGULATION	PROPOSED PROVINCIAL STANDARD	EXPLANATION
IF THERE IS A LEGAL NON-CONFORMING USE	Residential structures with two units shall be permitted even where such structures are legal non-conforming, but not when the non-conformity is with respect to use. Minor changes to the building envelope required to add a second unit would be permitted, provided that such alterations do not extend the degree of legal non-conformity. However, residential structures with two units may be required to comply with the unit size and parking standards outlined below.	*An existing two-unit residential structure which is legal non-conforming with respect to zoning standards such as lot size, density, and rear-yard setbacks would be permitted, even if the second unit has been added without the necessary building permits.* *The addition of a second unit to a legal non-conforming residential structure would also be permitted, provided that there are no major alterations to the exterior of the building. Minor alterations needed to add a second unit (e.g. to provide egress) would be acceptable, as long as they do not effect the legal non-conformity (e.g. the side yard of a residential structure could not be reduced if the structure is already legal non-conforming with respect to that side yard), and would otherwise be permitted under the zoning.* *Adding a second unit to a legal non-conforming residential structure should be permitted because it is unlikely that such an addition would have a greater land use impact than any other second unit. With respect to parking (where adding a second unit can have an impact), municipalities may require that residential structures with two units comply with the standards outlined below.* *In addition, there would be no requirement that residential structures which are legal non-conforming with respect to use (e.g. those located in an area zoned exclusively for heavy industry), be permitted.*
DENSITY	For the purposes of calculating density in cases where density is measured in terms of number of units per given area, residential structures containing two residential units shall be counted as one unit.	*Density requirements that specify a certain number of units per hectare or acre could not be used to restrict new units created through converting or adding onto residential structures. However, the ability of municipalities to apply other density standards (e.g. those based on gross floor area) would not be affected.*
AMENITY AREA	A designated amenity area shall not be required for each unit in a residential structure with two units.	*Designated amenity areas (i.e. areas of private open space suitable for recreation and leisure activities) are not needed to ensure that units meet appropriate health and safety standards.*

AREA OF REGULATION	PROPOSED PROVINCIAL STANDARD	EXPLANATION
SIZES OF UNITS IN RESIDENTIAL STRUCTURES WITH TWO UNITS	Minimum unit size requirements shall not exceed 25 m. sq. (269 sq. ft.) total floor area for bachelor units, and 32 m. sq. (344 sq. ft.) total floor area for other units. No minimum unit size based on any other measure (e.g. number of bedrooms; living area; habitable space) shall be specified.	*These figures are based on the minimum room size figures in the Ontario Building Code, and would apply to both units in a residential structure with two units.*
	No maximum size for either unit in a two unit residential structure, regardless of the unit of measure, shall be specified.	*Two units of any size should be permitted within a residential structure, provided that each unit meets the minimum size standard, and that all other applicable standards are met.*
	No floor area ratio between the two units in a residential structure shall be applied.	*Two units of any size should be permitted within a residential structure, provided that each unit meets the minimum size standard specified above, and all other applicable standards are met.*
SIZE OF RESIDENTIAL STRUCTURE REQUIRED BEFORE A SECOND UNIT CAN BE ADDED	There shall be no requirement that a residential structure be a certain size, regardless of the unit of measure, as a precondition for adding a second unit.	*It may be appropriate to allow the addition of a second unit to small residential structures, through either:* - *increasing the size of the building (in cases where the setback and density requirements of the zoning by-law would be exceeded by such additions, a minor variance or zoning change would be necessary); or* - *making use of underutilized space within the existing envelope (if there is sufficient space for two units which meet the unit minimum unit size standard).*

AREA OF REGULATION	PROPOSED PROVINCIAL STANDARD	EXPLANATION
EXTERNAL CHANGES	External modifications to residential structures required to add a second unit may be regulated, provided that the applicable standards: - do not have the effect of precluding the addition of second units; and - apply equally to similar modifications not associated with the addition of a second unit.	*The intent of the legislation is to allow the addition of a second unit to a residential structure, even if modifications to the exterior of the structure are required. Such modifications could be major (e.g. constructing additional floor space to the back of the existing residential structure) or minor (e.g. installing an external staircase or a separate entrance to the basement).* *Municipalities could apply standards which regulate exterior modifications, provided that such standards do not have the effect of precluding those modifications. For example, municipalities would be able to require that exterior stair- cases be enclosed, or located to the side or rear of a structure, but could not prohibit such staircases altogether.*
	Site plan control should not be applied to the construction of new residential structures with two units, unless site plan control is also applied to the construction of single unit residential structures of the same type elsewhere in the same zone.	*Recognizes that residential structures with two units do not necessarily have a different impact from those with one unit.*
	Site plan control should not be applied to the addition of a second unit to a residential structure, even if that addition results in substantial exterior alterations, unless site plan control is also applied to other additions to single unit residential structures of the same type elsewhere in the same zone.	*Recognizes that from a land use impact point of view, exterior alterations required to create second unit are similar to other types of residential renovations.*
UNITS BELOW GRADE	Units shall be permitted below grade, regardless of the proportion of that unit which is located below grade.	*If a below grade unit can meet natural lighting, egress and other applicable standards, it should be permitted.*

AREA OF REGULATION	PROPOSED PROVINCIAL STANDARD	EXPLANATION
PARKING FOR RESIDENTIAL STRUCTURES WITH TWO UNITS	The parking requirement for a residential structure with two units shall be no greater than for a residential structure with one unit if the parking requirement for the latter is two spaces or more. However, the parking requirement for a residential structure with two units may exceed that for a residential structure with one unit by up to one space, if the parking requirement for the latter is less than two spaces.	*If a municipality's parking requirement for residential structures containing a single unit is two parking spaces or more, the requirement for residential structures having two units may not be higher than the requirement for structures containing a single unit. However, if the requirement for structures containing a single unit is only one parking space, the requirement for structures containing two units may be two spaces, and if there is no parking requirement for structures containing a single unit, the requirement for structures containing two units may be one parking space.* *The implications of this standard are shown in the chart below:* *Current Municipal Standard for Single-Unit Structures* / *Maximum Standard for Two-Unit Structures* *0* / *1* *1* / *2* *2* / *2* *3* / *3* *4* / *4* *Studies have shown that households residing in two-unit structures tend to be smaller and to own fewer automobiles on average. Having dramatically higher standards for two-unit structures than for single-unit structures is therefore, difficult to justify from the standpoint of land use impact.*
	The parking requirement for residential structures with two units may be met by legal on-street parking, if available within 100 m. of the residential structure.	*If municipalities deem on-street parking to be appropriate, such parking should be applied to the parking requirement for residential structures with two units.*

AREA OF REGULATION	PROPOSED PROVINCIAL STANDARD	EXPLANATION
PARKING (CON'T)	Tandem parking (one car parked behind another) shall be accepted in the calculation of the number of on-site parking spaces available for a residential structure with two units.	*While tandem parking is inconvenient, both landlords and tenants would be aware of the parking situation when they enter into a rental agreement.*
	If an additional parking space is required for the second unit, there shall be no requirement that the parking space be situated in a garage or any other enclosed area.	*This would not have a significant neighbourhood impact, since many households park automobiles outside in any case.*
	Driveway space between the front elevation of the residential structure and the street allowance shall be considered in the calculation of the number of on-site parking spaces available for a residential structure with two units.	*Would not have a significant neighbourhood impact, since many households already make use of this driveway space. Furthermore, this standard would only affect residential structures with large front yards.*

Property standards for consultation

Building standards for newly-constructed and newly-renovated dwelling units are established through the Ontario Building Code. Municipalities do not have the power to impose standards for construction.

However, the Planning Act allows municipalities to establish property standards for existing dwelling units. Municipal property standards by-laws cover occupancy considerations (e.g. area per resident; ceiling height), as well as property maintenance.

Similar to the zoning standards discussed earlier, the proposed legislation would allow the province to establish regulations which set out maximum local property standards in certain areas, and to prohibit other standards altogether. These standards, outlined in the chart on the following pages, will help to ensure that municipalities do not apply excessive property standards which are so onerous as to make apartments in houses impractical. A municipality would be free to use the standard in provincial regulations, to have a reduced standard, or not to address a particular issue in its property standards by-law. The Ontario Fire Code and orders issued by the Ontario Fire Marshal would still apply.

Wherever applicable, the property standards outlined in the chart reflect the Ontario Building Code standards for the construction of units and the standards for existing units contained in the draft Guidelines for Fire Safety in Small Multi-Unit Residential Occupancies prepared by the Ontario Fire Marshal.

PROPOSED PROVINCIAL REGULATIONS: PROPERTY STANDARDS

AREA OF REGULATION	PROPOSED PROVINCIAL STANDARD	EXPLANATION
GENERAL RULE FOR PROPERTY STANDARDS FOR RESIDENTIAL STRUCTURES WITH ONE AND TWO UNITS	Except as specified elsewhere in these regulations, property standards which apply to existing residential structures with two units shall not exceed those applied to residential structures with one unit.	*Municipalities could not impose higher standards on existing residential structures with two units than on residential structures with one unit regarding: area per resident; ventilation; indoor air temperature; outdoor storage; property maintenance; etc.* *The only exceptions to this rule would be the standards outlined on the following pages, the application of which may indeed lead to higher standards for the whole structure.* *In every case, the standards outlined on the following pages deal with areas referenced in the Ontario Building Code. It is not the intent of the legislation to supersede the Ontario Building Code, so the unit-specific standards outlined below apply only to existing units.* *The Ontario Building Code would continue to apply to construction activities associated with second units (creation of new units and the renovation of ones already occupied).* *For units created after the legislation comes into effect (which would not fall under the definition of "existing unit") municipalities could impose property standards in the areas specified below which equal those which apply to the creation of new units in the Ontario Building Code. For example, if the current proposal for a minimum 2.1 m. (6'8") ceiling height for finished basement space is included in the Ontario Building Code, municipalities could apply this requirement to basement apartments created after the legislation comes into effect. This would remove the incentive for property owners to create units without the necessary building permits, in the hopes that they could avoid having to comply with Ontario Building Code standards which are more onerous that those found in property standards by-laws.*

AREA OF REGULATION	PROPOSED PROVINCIAL STANDARD	EXPLANATION
CEILING HEIGHT	For units (or parts thereof) located above grade, a minimum height requirement in excess of 2.1 m. (6'11") shall not be required. However, this minimum height requirement shall apply to an area no greater than the applicable minimum unit size.	*The 2.1 m. figure is consistent with the minimum requirement for new units specified in the Ontario Building Code.* *Under this standard, it would be possible for a unit larger than the minimum unit size to have ceiling heights less than the required height in certain areas (e.g. where a sloping roof meets the wall), so long as an area at least equal to the minimum unit size has a ceiling height of at least of 2.1 m.*
	For units (or parts thereof) located below grade, the minimum height requirement may not exceed 1.96 m. (6'5"). However, this minimum height requirement shall apply to an area no greater than the applicable minimum unit size.	*Although a ceiling height of 2.03 m. (6'8") for finished basement areas is proposed for the Ontario Building Code, it is generally accepted that standards for existing units may be less than for new ones, provided that basic levels of health and safety are met. It appears that ceiling heights less than 2.03 m. do not pose health and safety risks. Neither the Ontario Fire Code nor the Ontario Fire Marshal's draft retrofit Guidelines for Fire Safety in Small-Unit Residential Occupancies specify a ceiling height standard, while certain municipalities have recognized that ceiling heights as low as 1.96 m. are safe.* *This standard would facilitate the legalization of many existing basement units which meet reasonable levels of health and safety, but which have low ceiling heights. The application of the 2.03 m. standard would mean that it would be necessary to lower the basement floor if such units are to be legalized. This would be very disruptive for the tenants as well as prohibitively expensive. The more likely result would be that property owners would choose to shut down the units, or have them remain illegal.* *The application of the standard to the area represented by the minimum unit size means that part of the total floor area of a unit need not comply with the required ceiling height (e.g. under duct work and central beams), so long as an area at least equal to the minimum unit size meets the minimum clearance.*

AREA OF REGULATION	PROPOSED PROVINCIAL STANDARD	EXPLANATION
EGRESS	Egress requirements for residential units in structures with two units may include achieving of one of the following compliance alternatives: - have a door, which may be a sliding door, that opens directly to the outside from a unit, and which has reasonable access to grade; - have an exit into a fire-rated hallway, stairway or vestibule which has direct access to the outside through a door which is not a sliding door; or - have two means of escape which are arranged in such a manner so that one may be used if the other becomes inaccessible due to a fire. One of the means of escape must be a door, which may lead through be another unit. The other means of escape may be a window that satisfies the conditions specified below. No additional egress requirements may be imposed.	*Complies with the minimum guidelines for existing units outlined in the draft Guidelines for Fire Safety in Small Multi-Unit Residential Occupancies, prepared by the Office of the Fire Marshal.*

AREA OF REGULATION	PROPOSED PROVINCIAL STANDARD	EXPLANATION
WINDOWS AS MEANS OF EGRESS	Standards for windows which serve as means of egress may include the following: - be easily opened from the inside without the use of tools; - have an individual, unobstructed open portion having a minimum area of 0.35 m. sq. (3.8 ft. sq.), with no dimension less than 0.38 m. (15"); - have a sill no more than 1.0 m. (3'3") above the floor or permanent access (such as steps); - have reasonable access to grade; and - where the window opens into a window well, a clearance of at least 0.55 m. (21.625") must be provided in front of the window, and the swing of the window must not reduce clearance in any way which would restrict escape. No additional window standards may be imposed.	*Complies with the minimum guidelines for existing units outlined in the draft Guidelines for Fire Safety in Small Multi-Unit Residential Occupancies, prepared by the Office of the Fire Marshal.*
SMOKE DETECTORS	One smoke detector (which may be battery operated) may be required per unit where 30 minute fire separation is provided (see below). However, an interconnected fire smoke alarm system may be required if fire separation is less than 30 minutes.	*Complies with the draft minimum guidelines for existing units outlined in the draft Guidelines for Fire Safety in Small Multi-Unit Residential Occupancies, prepared by the Office of the Fire Marshal.*
FIRE SEPARATION	A fire separation of up to 30 minutes may be required between: - different units; - units and common hallways, stairwells, and vestibules which serve as means of egress; and - common hallways, stairways, and vestibules which serve as means of egress and other common areas. Openings in fire separations shall be protected by closures with a fire rating of up to 20 minutes.	*Complies with the draft minimum guidelines for existing units outlined in the draft Guidelines for Fire Safety in Small Multi-Unit Residential Occupancies, prepared by the Office of the Fire Marshal.*

AREA OF REGULATION	PROPOSED PROVINCIAL STANDARD	EXPLANATION
FIRE DAMPERS	Fire dampers shall not be required in the ducts penetrating the required fire separations in a residential structure containing two units, provided that smoke detectors are installed in the supply and return air duct system which would turn off the fuel supply and electrical power to the heating system upon activation of such detectors.	*Consistent with the minimum Ontario Building Code requirement for units created through renovation.*
NATURAL LIGHTING	The required window area shall not exceed 5 % of the total floor area for living rooms and 2.5 % for bedrooms, provided that there is no conflict with egress requirements. --- An existing room converted to an interior room created by an addition to the structure shall not require a window, provided that there is an opening in a dividing wall to an adjoining room where the window in the adjoining room has an area at least 5% of the combined floor areas of the two rooms, provided there is no conflict with egress requirements.	*Consistent with the minimum Ontario Building Code requirement for units created through renovation.* --- *Consistent with the minimum Ontario Building Code requirement for units created through renovation.*

Questions & Answers on Related Issues

1. Can municipalities license an apartment in a house?

No. The Municipal Act currently does not give municipalities the power to license apartments in houses, and this will not be changed by the proposed legislation. Apartments in houses are the same as any other type of unit, and therefore should not be subject to special requirements. Licensing would also discourage the creation of legal apartments in houses. Rather than provide municipalities with the power to license second units, the government supports provisions which improve municipalities' ability to enforce reasonable health and safety standards.

2. Can municipalities impose an owner occupancy requirement?

No. The Planning Act currently does not give municipalities the power to restrict apartments in houses to cases where the owner lives on the premises, and the proposed legislation would not alter this situation. An owner-occupancy requirement would restrict supply opportunities and would likely be unworkable in practice (the Landlord and Tenant Act probably does not permit the eviction of tenants in cases where a house with an apartment is sold to an individual who does not want to live on site).

3. **Will apartments in houses pay their way as far as municipal taxes are concerned?**

Yes. Creating legal apartments in houses will generally mean more tax revenue for municipalities. Adding an apartment generally increases the home's market value, which is what property taxes in most municipalities are based on. Home improvements are tracked through building permits and the reassessment process.

4. **Does the Development Charges Act apply to an apartment in a house?**

Not in the case of existing houses. Municipalities are prohibited from imposing development charges on the first apartment added to a semi-detached or row house, or to the first and second apartment added to a detached house.

However, the Development Charges Act does give municipalities the power to impose a charge on an apartment installed at the time a house is constructed, although municipalities can choose to designate categories of affordable housing as exempt from development charges.

5. **Does the Landlord and Tenant Act apply to an apartment in a house?**

Yes. Apartments in houses are in general covered by the Landlord and Tenant Act, except in cases where no rent is paid (e.g. a unit is occupied by a family member).

While the Landlord and Tenant Act may not prevent evictions where someone shares a kitchen or bathroom with the owner and his or her family, such living arrangements would not come within the definition of apartments in houses under the proposed legislation.

6. **Does the Residential Rent Regulation Act apply to an apartment in a house?**

Yes. The Residential Rent Regulation Act applies to apartments in houses the same way as to any other unit. The annual rent review "guideline" determines how much a landlord can raise the rent without getting permission from the Ministry of Housing for certain above-guideline increases. However, homeowners may set the rent for an apartment in their house the first time the apartment is rented, provided that the apartment has been created out of space that has not been previously rented out.

7. Will the situation be changed by the new Rent Control Act?

Somewhat. This new law, which will replace the Residential Rent Regulation Act, also applies to apartments in houses, but has a number of new provisions. As is the case with the current law, the Rent Control Act would allow landlords to apply for above-guideline rent increases. However, these would be limited to high increases in utilities and municipal taxes and certain capital expenditures. The total rent increase cannot be more than 3 percentage points above the annual guideline in any one year.

The Rent Control Act, also provides a five-year exemption from rent control for units created in new homes, although this exemption does not extend to apartments added to existing homes (i.e. those occupied prior to November, 1991). As is the case with the present law, landlords in both cases would be able to set the initial rent at whatever the market would support, except in cases where an apartment was created out of existing space already rented out.

8. Will all existing apartments in houses be considered "legal" as a result of "as-of-right" legislation?

No. All existing apartments must meet municipal zoning and property standards, and must conform to the Ontario Fire Code and orders issued by the Ontario Fire Marshal. The legislation would not provide an amnesty for currently occupied units which are substandard. The legislation would help ensure that municipal standards are reasonable, and do not have the effect of prohibiting units which meet reasonable health and safety standards.

9. Does this mean that some apartments will be closed down?

Possibly. Improved powers of entry likely would result in the identification of more substandard apartments. On the other hand, the provincial regulations would ensure that no artificially high standards are applied. The owners of substandard units could be required to either bring them up to standard, or close them down. It is expected that most homeowners will make the required upgrades, presuming that they would not want to lose future rental revenue.

10. Would the apartments in houses provisions of the legislation apply to rooming, boarding and lodging houses?

No. The legislation will apply to self-contained units, not to accommodation where individuals rent rooms and share a bathroom and/or kitchen. However, the requirement in the 1989 Housing Policy Statement that rooming, boarding, and lodging houses be permitted in appropriate areas will still apply to municipal planning decisions.

11. Why is the government proposing amendments related to garden suites?

The legislative authority presently available to municipalities to regulate this supportive housing form is currently somewhat limited. These amendments will provide municipalities with the appropriate tools to effectively regulate this housing form as well as to increase the degree of certainty of tenure for people who wish to have garden suites.

12. Would the legislation mean that garden suites would be permitted everywhere?

No. Garden suites would be permitted in suitable locations as determined by the municipality. The municipality may permit garden suites on a case-by-case basis or throughout the municipality.

13. Why were other legislative approaches to garden suites such as licensing not selected?

The proposed legislative amendments related to garden suites simply improve upon the approach which proved effective within the province's Portable Living Units for Seniors Demonstration Project.

Licensing has traditionally been used to regulate businesses from a health and safety perspective, not to control or regulate the occupancy of dwellings.

Not all municipalities have the expertise or staff to implement a licensing program.